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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Allan Green et al.  
U.S. Serial No: 09/981,124  
Filed: October 17, 2001  
For: FATTY ACID EPOXYGENASE GENES FROM PLANTS AND  
USES THEREFOR IN MODIFYING FATTY ACID  
METABOLISM

Notice of  
Allowance mailed : April 27, 2009

Confirmation No. : 9503

30 Rockefeller Plaza, 20<sup>th</sup> Floor  
New York, New York 10112  
July 27, 2009

Mail Stop: Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

SIR:

PETITION TO CORRECT PATENT TERM ADJUSTMENT (PTA)  
INDICATED IN NOTICE OF ALLOWANCE

A Notice of Allowance was mailed on April 27, 2009 for the above-identified application. One of the attachments to the Notice of Allowance was a Determination of Patent Term Adjustment Under 35 U.S.C. §154(b) that indicated that the total PTA to date is 0 days. It is believed that the correct total Patent Term Adjustment under 35 U.S.C. §154(b) to date is 580 days.

The determination of the total PTA of 0 days is erroneous at least because the U.S. Patent & Trademark Office's (PTO) PTA calculator failed to account for two separate Patent Office delays. The PTO's PTA calculation as obtained from the PAIR

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system is attached hereto as **Exhibit A**. The two PTO delay periods should have their days added together in accordance with the reasoning in *Wyeth et al. v. Dudas*, No. 07-1492 (D.D.C. September 30, 2008). The number of PTA credits for PTO delay under 35 USC § 154(b)(1)(A) and 37 CFR § 1.702(a)(1) is 449 days (first period). The other delay warrants a PTA credit of 841 days for PTO delay under 35 USC § 154(b)(1)(B) and 37 CFR § 1.702(b) (second period). Because these two periods of delay do not overlap, Applicants are entitled to the sum of these two periods. Accordingly, a total PTA credit of 1,290 days (i.e., 449 + 841 days) is appropriate based upon the PTO delay.

In accordance with 1.705(b), this application for patent term adjustment is filed no later than the payment of the issue fee but after the date of mailing of the notice of allowance.

An application for patent term adjustment under 37 CFR § 1.705 must be accompanied by:

- 1) The fee set forth in §1.18(e).

Applicants hereby enclose a check for \$200.00 for the fee set forth in §1.18(e).

- 2) A statement of the facts involved, specifying:

- i) *The correct patent term adjustment and the basis or bases under §1.702 for the adjustment.*

**PTO Delays**

As of today, July 23, 2009, the correct total PTA credit based upon the PTO delays is 1,290

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days. The basis for the 449 days PTA credit is under § 1.702(a)(1) and is due to the PTO's failure to mail a notification under 35 U.S.C. § 132 or a notice of allowance within 14 months of the application's filing date. The basis for the 841 days PTA credit is under § 1.702(b) and is due to the PTO's failure to issue a patent within three years of the filing date.

- (ii) *The relevant dates as specified in § 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled.*

#### First Part of PTA Credit

The relevant dates as specified in § 1.703(a)(1) for first part of the PTA credit are as follows: the date of December 17, 2002 which is the date that is fourteen months after the date on which the application was filed under 35 USC § 111(a); and the date of February 17, 2004 which is the mailing date of a notification under 35 USC § 132. Thus, the period of delay runs from December 18, 2002 to February 17, 2004. This portion of the first period of delay is 427 days.

The relevant dates as specified in § 1.703(a)(3) are as follows: the date of April 6, 2009 which is the date that is the day after the four months after the December 5, 2008 Supplemental reply in compliance with § 1.113(c) was filed; and the date of April 27,

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2009 which is the mailing date of a Notice of Allowance. Thus, the period of delay runs from April 6, 2009 to April 27, 2009. This portion of the first period of delay is 22 days.

Accordingly, the total first period of delay is 449 days.

Second Part of PTA Credit Not Overlapping with First

The relevant dates as specified in § 1.703(b) for the second part of the PTA credit are as follows: the date of October 18, 2004 which is the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a); the date on which the application will issue; and the date of February 5, 2007 which is the date that a request for continued examination of the application under 35 USC § 132(b) was filed. Thus, the period of delay runs from October 18, 2004 to the issue date, excluding the number of days in the period beginning on the date of February 5, 2007 on which the request for continued examination was filed and ending on the issue date. Accounting for the excluded period, the period of delay runs from October 18, 2004 to February 5, 2007. This second period of delay is 841 days.

The total of the first and second periods of not overlapping delay is 1,290 days.

The total PTA under § 1.703(f) is therefore 580 days, which is the total PTA credit for PTO delay of 1,290 days less the total PTA debit for applicant delay of 710 days calculated under § 1.704 in detail below.

iii) *Whether the patent is subject to a terminal disclaimer and any expiration date specified in the terminal disclaimer.*

The subject patent is not subject to a terminal disclaimer. See 37 CFR § 1.705(b)(2)(iii).

iv) (A) *Any circumstances during the prosecution of the application resulting in the patent that appear to constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.*

**Applicant Delay Days**

The total number of PTA debits of 710 days for applicant delay that is set forth on the enclosed PTA History (Exhibit A) is correct.

The following statements are required by 37 CFR § 1.705(b)(2)(iv)(A) and list any circumstances during the prosecution of this application which appear to constitute a failure to engage in reasonable efforts to conclude processing or examination of the above-identified patent application as set forth in § 1.704.

i) Applicants' Amendment in Response to a February 17, 2004 Office Action was sent on June 17,

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2004 by first class mail under 37 CFR § 1.8 and received by the PTO on June 21, 2004, which is after the three month period for filing a response. Under § 1.704(b), the period of adjustment for delay associated with this reply begins on the day after the date that is three months after the February 17, 2004 date of mailing of the Office Action, i.e. May 18, 2004, and ends on the date the reply was filed, i.e. June 21, 2004. Thus, the period of delay runs from May 18, 2004 to June 21, 2004. This period of delay is 35 days.

ii) Applicants' Communication in Response to a September 16, 2004 Notice of Informal or Non-Responsive Amendment was sent on October 15, 2004 by first class mail under 37 CFR § 1.8 and received by the PTO on October 18, 2004, which is after the date the Amendment in Response to a February 17, 2004 Office Action was filed on June 21, 2004. Under § 1.704(c)(8), the period of adjustment for delay associated with this reply begins on the day after the Amendment in response to the office action was filed, i.e. June 22, 2004, and ends on the date the Communication was filed, i.e. October 18, 2004. Thus, the period of delay runs from June 22, 2004 to October 18, 2004. This period of delay is 119 days.

iii) Applicants' Communication in Response to a December 29, 2004 Notice of Informal or Non-Responsive Amendment was sent on January 31, 2005 by first class mail under 37 CFR § 1.8 and received by the PTO on February 2, 2005. Under § 1.704(c)(8), the period of adjustment for

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delay associated with this reply begins on the day after the first Communication In Response to Notice of Informal or Non-Responsive Amendment was filed, i.e. October 19, 2004, and ends on the date the second Communication was filed, i.e. February 2, 2005. Thus, the period of delay runs from October 19, 2004 to February 2, 2005. This period of delay is 107 days.

iv) Applicants' Communication in Response to a April 20, 2005 Notice of Informal or Non-Responsive Amendment was sent on May 2, 2005 by first class mail under 37 CFR § 1.8 and received by the PTO on May 5, 2005. Under § 1.704(c)(8), the period of adjustment for delay associated with this reply begins on the day the second Communication In Response to Notice of Informal or Non-Responsive Amendment was filed, i.e. February 3, 2005, and ends on the date the third Communication was filed, i.e. May 5, 2005. Thus, the period of delay runs from February 3, 2005 to May 5, 2005. This period of delay is 92 days.

v) Applicants' Amendment in Response to an August 5, 2005 Office Action was sent on January 5, 2006 by first class mail under 37 CFR § 1.8 and received by the PTO on January 9, 2006, which is after the three month period for filing a response. Under § 1.704(b), the period of adjustment for delay associated with this reply begins on the day after the date that is three months after the date of mailing of the Office Action, i.e. November 6, 2005, and ends on the date the reply was filed, i.e. January 9, 2006. Thus, the period of delay runs from November 6,

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2005 to January 9, 2006. This period of delay is 65 days.

- vi) Applicants' Communication in Response to an April 10, 2006 Notice of Informal or Non-Responsive Amendment was sent on May 5 2006 by first class mail under 37 CFR § 1.8 and received by the PTO on May 5, 2006. Under § 1.704(c)(8), the period of adjustment for delay associated with this reply begins on the day after the Amendment in response to the office action was filed, i.e. January 10, 2006, and ends on the date the reply was filed, i.e. May 5, 2006. Thus, the period of delay runs from January 10, 2006 to May 5, 2006. This period of delay is 116 days.
- vii) Applicants' Response to a July 31, 2006 Final Office Action was sent on November 22, 2006 by first class mail under 37 CFR § 1.8 and received by the PTO on November 24, 2006. Under § 1.704(b), the period of adjustment for delay associated with this reply begins on the day after the date that is three months after the date of mailing of the Final Office Action, i.e. November 1, 2006, and ends on the date the reply was filed, i.e. November 24, 2006. Thus, the period of delay runs from November 1, 2006 to November 24, 2006. This period of delay is 24 days.
- viii) Applicants' Amendment in Response to a September 17, 2007 Office Action was sent on March 17, 2008 by first class mail under 37 CFR § 1.8 and received by the PTO on March 21, 2008, which is after the three month period for filing a response. Under § 1.704(b), the



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period of adjustment for delay associated with this reply begins on the day after the date that is three months after the date of mailing of the Office Action, i.e. December 18, 2007 and ends on the date the reply was filed, i.e. March 21, 2008. Thus, the period of delay runs from December 18, 2007 to March 21, 2008. This period of delay is 95 days.

ix) Applicants' Amendment in Response to a July 9, 2008 Final Office Action was sent on November 10, 2008 by facsimile under 37 CFR § 1.8 and received by the PTO on November 10, 2008, which is after the three month period for filing a response. Under § 1.704(b), the period of adjustment for delay associated with this reply begins on the day after the date that is three months after the date of mailing of the Final Office Action, i.e. October 10, 2008 and ends on the date the reply was filed, i.e. November 10, 2008. Thus, the period of delay runs from October 10, 2008 to November 10, 2008. This period of delay is 32 days.

x) Applicants' Supplemental Amendment in Response to a July 9, 2008 Final Office Action was sent on December 5, 2008 by facsimile under 37 CFR § 1.8 and received by the PTO on December 5, 2008, which is after the three month period for filing a response. Under § 1.704(b), the period of adjustment for delay associated with this reply begins on the day the original Amendment in response to the final office action was filed, i.e. November 10, 2008 and ends on the date the supplemental response was filed, i.e. December 5, 2008. Thus, the period

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of delay runs from November 10, 2008 to  
December 5, 2008. This period of delay is 25  
days.

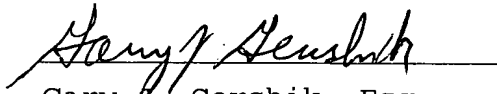
The total number of PTA debits for applicant delay is 710 days  
(i.e.,  $35 + 119 + 107 + 92 + 65 + 116 + 24 + 95 + 32 + 25$   
days).

**Conclusion**

As discussed above, Applicants submit that the correct patent term adjustment under 35 U.S.C. §154(b) for the subject application is 580 days (1290 PTO delay - 710 applicant delay). Accordingly, Applicants respectfully request that the PTO correct the patent term adjustment under 35 U.S.C. §154(b) for the allowed application.

No fee, other than the \$200.00 fee for filing an application for patent term adjustment, is deemed necessary in connection with the filing of this Petition. However, if any additional fee is necessary, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

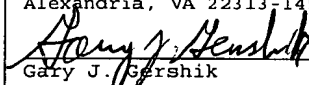
Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

 July 27, 2009  
Gary J. Gershik Date  
Reg. No. 39,992

# EXHIBIT A

09/981,124	FATTY ACID EPOXYGENASE GENES FROM PLANTS AND USES THEREFOR IN MODIFYING FATTY ACID METABOLISM	07-21-2009::16:02:46
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### Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 09/981,124

Filing or 371(c) Date:	10-17-2001	USPTO Delay (PTO) Delay (days):	475
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	710
Post-Issue Petitions (days):	+0	Total PTA (days):	0
USPTO Adjustment(days):	+0	Explanation Of Calculations	

### Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
04-27-2009	Mail Notice of Allowance	48	
04-24-2009	Notice of Allowance Data Verification Completed	↑	
04-24-2009	Document Verification	↑	
04-24-2009	Examiner's Amendment Communication	↑	
03-16-2009	Correspondence Address Change	↑	
02-19-2009	Change in Power of Attorney (May Include Associate POA)	↑	
01-12-2009	Notice of Appeal Filed	↑	
01-12-2009	Request for Extension of Time - Granted	↑	
01-30-2009	Change in Power of Attorney (May Include Associate POA)	↑	
12-31-2008	Date Forwarded to Examiner	↑	
12-05-2008	Supplemental Response		25
12-05-2008	Request for Extension of Time - Granted		↑
12-02-2008	Mail Advisory Action (PTOL - 303)		↑
11-26-2008	Advisory Action (PTOL-303)		↑
11-20-2008	Date Forwarded to Examiner		↑
11-10-2008	Amendment after Final Rejection		32
11-10-2008	Request for Extension of Time - Granted		↑
11-06-2008	Mail Examiner Interview Summary (PTOL - 413)		↑
11-05-2008	Examiner Interview Summary Record (PTOL - 413)		↑
10-07-2008	Mail Advisory Action (PTOL - 303)		↑
10-01-2008	Advisory Action (PTOL-303)		↑
09-22-2008	Date Forwarded to Examiner		↑
09-09-2008	Amendment after Final Rejection		↑
07-09-2008	Mail Final Rejection (PTOL - 326)		↑
07-03-2008	Final Rejection		
03-21-2008	Information Disclosure Statement considered		
03-21-2008	Information Disclosure Statement (IDS) Filed		
03-21-2008	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received		
03-21-2008	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received		
04-24-2008	Date Forwarded to Examiner		
03-21-2008	Response after Non-Final Action		95

03-21-2008	Request for Extension of Time - Granted	↑
03-21-2008	Information Disclosure Statement (IDS) Filed	↑
09-17-2007	Mail Non-Final Rejection	↑
09-11-2007	Non-Final Rejection	
06-19-2007	Date Forwarded to Examiner	
06-07-2007	Response after Non-Final Action	
05-04-2007	Mail Miscellaneous Communication to Applicant	
04-30-2007	Miscellaneous Action with SSP	
02-15-2007	Date Forwarded to Examiner	
02-15-2007	Date Forwarded to Examiner	
02-05-2007	Request for Continued Examination (RCE)	
02-15-2007	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)	
02-05-2007	Request for Extension of Time - Granted	
02-05-2007	Workflow - Request for RCE - Begin	
12-20-2006	Mail Appeals conf. Proceed to BPAI	
12-18-2006	Pre-Appeals Conference Decision - Proceed to BPAI	
11-24-2006	Request for Pre-Appeal Conference Filed	
11-24-2006	Notice of Appeal Filed	24
11-24-2006	Request for Extension of Time - Granted	↑
07-31-2006	Mail Final Rejection (PTOL - 326)	↑
07-24-2006	Final Rejection	
05-05-2006	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	
05-13-2006	Date Forwarded to Examiner	
05-05-2006	Response after Non-Final Action	116
04-10-2006	Mail Notice of Informal or Non-Responsive Amendment	↑
01-19-2006	Date Forwarded to Examiner	↑
01-09-2006	Informal or Non-Responsive Amendment after Examiner Action	↑
01-09-2006	Response after Non-Final Action	65
01-09-2006	Request for Extension of Time - Granted	↑
08-05-2005	Mail Non-Final Rejection	↑
07-25-2005	Non-Final Rejection	
05-12-2005	Date Forwarded to Examiner	
05-05-2005	Response to Election / Restriction Filed	92
04-20-2005	Mail Notice of Informal or Non-Responsive Amendment	↑
02-16-2005	Date Forwarded to Examiner	↑
02-02-2005	Informal or Non-Responsive Amendment after Examiner Action	↑
02-02-2005	Response to Election / Restriction Filed	107
02-02-2005	Workflow incoming amendment IFW	↑
12-29-2004	Mail Notice of Informal or Non-Responsive Amendment	↑

10-25-2004	Date Forwarded to Examiner	↑
10-18-2004	Informal or Non-Responsive Amendment after Examiner Action	↑
10-18-2004	Response to Election / Restriction Filed	119
09-16-2004	Mail Notice of Informal or Non-Responsive Amendment	↑
08-02-2004	Correspondence Address Change	↑
08-03-2004	Change in Power of Attorney (May Include Associate POA)	↑
07-09-2004	Date Forwarded to Examiner	↑
06-21-2004	Informal or Non-Responsive Amendment after Examiner Action	↑
06-21-2004	Response to Election / Restriction Filed	35
06-21-2004	Request for Extension of Time - Granted	↑
06-21-2004	Workflow incoming amendment IFW	↑
05-13-2004	Reference capture on IDS	↑
03-19-2004	Information Disclosure Statement (IDS) Filed	↑
03-19-2004	Information Disclosure Statement (IDS) Filed	↑
02-17-2004	Mail Restriction Requirement	427
02-09-2004	Requirement for Restriction / Election	↑
07-08-2003	IFW TSS Processing by Tech Center Complete	↑
07-07-2003	IFW TSS Processing by Tech Center Complete	↑
04-23-2002	X-Pre-Legal Complete Amended Case	↑
04-17-2002	Information Disclosure Statement (IDS) Filed	↑
04-17-2002	Information Disclosure Statement (IDS) Filed	↑
04-14-2002	X-Pre-Legal Complete New Case	↑
02-06-2002	Error(s) in CRF Corrected by STIC	↑
01-10-2002	Case Docketed to Examiner in GAU	↑
12-06-2001	Application Dispatched from OIPE	↑
12-05-2001	Correspondence Address Change	↑
12-05-2001	Correspondence Address Change	↑
10-29-2001	IFW Scan & PACR Auto Security Review	↑
10-17-2001	CRF Disk Has Been Received by Preexam / Group / PCT	↑
10-17-2001	Initial Exam Team nn	↑

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